

CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS

CALIFORNIA CODE OF REGULATIONS TITLE 16. Professional and Vocational Regulations DIVISION 1. Board of Accountancy Regulations

ARTICLE 13. DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES, PERMITS, OR LICENSES (Sections 98 - 99.1)

Section 98. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6th edition, 2005) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 5010, 5018, and 5116 Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 5018, 5100, and 5116 - 5116-6, Business and Professions Code; and Section 11425.50(e), Government Code.

HISTORY:

1. New section filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
2. Amendment of section and NOTE filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).
3. Amendment filed 1-23-2004; operative 1-23-2004.
4. Amendment of section and Note filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

Section 98.1. Mediation Guidelines.

The guidelines, entitled "California Board of Accountancy Mediation Guidelines" (July 17, 1998), which are hereby incorporated by reference, constitute the Board's guidelines for determining whether an enforcement matter under Article 6 of the Accountancy Act is appropriate for referral to mediation and for the procedures and the form of the mediation process.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code, Section 11420.10 Government Code.

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HISTORY:

1. New section filed 1-18-2000; operative 2-17-2000 (Register 2000, No.3).

Section 99. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (c) Gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;
- (d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 481 and 5100, Business and Professions Code.

HISTORY:

1. New section filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment of first paragraph and subsections (a) and (c) filed 7-11-2007; operative 8-1-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 28).

Section 99.1. Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc.

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).

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(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 480, 481, 482, 486, 5100 and 5106, Business and Professions Code; and Section 1203.4, Penal Code.

HISTORY:

1. New Article 13 filed 2-9-73 as an emergency; designated effective 3-7-73 (Chap. 903, 1972 Stats.) (Register 73, No. 8).
2. Certificate of Compliance filed 7-3-73 (Register 73, No. 27).
3. Renumbering from Section 100.1 filed 4-9-74; effective thirtieth day thereafter (Register 74, No. 15).
4. Amendment filed 2-14-75; effective thirtieth day thereafter.
5. Amendment filed 4-12-83; effective thirtieth.